

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: KENNETH W. KLINE Facility #60969 HARRISON COUNTY, IOWA	ADMINISTRATIVE ORDER NO. 2012-AFO- 20
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TO: Kenneth W. Kline
2316 Lyons Trail
Missouri Valley, IA. 51555

I. SUMMARY

This Administrative Order (Order) requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Alison Manz
IDNR Field Office #4
1401 Sunnyside Lane
Atlantic, IA 50022
Ph: (712) 243-1934
Fax: (712) 243-6251

Appeal, if any, to:

Director
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, IA 50319-0034

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty to:

Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Attn: Randy Clark

II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto, and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Kenneth W. Kline¹ owns and operates a cattle open feedlot operation at 2316 Lyons Trail, Missouri Valley, located in the SW1/4 of the NW1/4 of Section 25, T78N, R44W (Saint Johns Township), Harrison County, Iowa. The operation consists of a 1,300 head capacity open feedlot. Manure runoff control measures consist of a synthetic lined basin² (basin) and a grass filter strip designed to settle out manure solids.

2. On September 4, 2002, the Department issued Administrative Consent Order No. 2002-AFO-31 to Kenneth Kline and Lynn Kline regarding this operation. The Order addressed the discharge of manure solids into an unnamed Euclid Creek tributary and failures to comply with discharge and reporting requirements of NPDES Permit No. 43-00-0-04. Among other things, the Order required the Klines to comply with minimum manure control requirements and all conditions of the NPDES permit.

3. On May 5, 2005, Department Field Office #4 (FO4) staff inspected the Kline operation to determine if it was in compliance with the NPDES Permit, thereby allowing the Permit to be renewed after receipt of a renewal application. By letter dated May 25, 2005, Mr. Kline was advised by FO4 that the NPDES Permit could not be renewed until a number of issues were addressed, including elimination of an overflow tube at the basin, improper use and maintenance of filter strips, intended use of the pasture north of the feedlot, and improper land application method. A written response was required by June 15, 2005, but Mr. Kline did not respond and did not apply for renewal of the NPDES permit.

4. On April 26, 2006, FO4 staff inspected the Kline operation. The overflow tube at the basin had not been removed.

5. During a telephone conversation with FO4 staff on August 13, 2007, Mr. Kline stated that he wanted to reduce his feedlot capacity to less than 1,000 head because he hadn't exceeded that number for 3 years. However, a nutrient management plan submitted by Mr. Kline on August 27, 2007, indicated the feedlot had a capacity of 1,300 head.

¹ Referenced as "Mr. Kline" herein, including a correspondence from Mara Kline and Abe Sandquist, purportedly on behalf of Mr. Kline.

² Authorized by Construction Permit No. CP-A94-162, issued on November 22, 1994.

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6. On January 10, 2008, FO4 staff inspected the Kline feedlot. Not only had Mr. Kline not corrected the deficiencies observed by FO4 staff on May 5, 2005, it appeared the feedlot had expanded to the north and excessive manure solids were observed in the grass filter strip. By letter from FO4 dated April 23, 2008, Mr. Kline was required to submit a written response by May 1, 2008, addressing the deficiencies observed on May 5, 2005, plus lack of maintenance of the grass filter strip and the northerly expansion of the feedlot.

7. On May 5, 2008, FO4 received a letter from Mr. Kline in response to the Department's April 23, 2008, letter. Mr. Kline wrote that he responded to the Department's May 5, 2005 inspection and enclosed a letter addressed to FO4 dated June 1, 2005 that was purportedly sent on June 2, 2005. Addressing issues from the May 5, 2005 inspection, Mr. Kline reported that the overflow tube was removed shortly after the inspection; the filter strip and feeding areas in the pasture area were seeded down but lack of rainfall necessitated reseeding on June 15, 2006 and June 1, 2007; the solid settling areas were cleaned out in March, 2006; and slurry wagons were used to land apply liquid from the lagoon in May and November, 2006. Mr. Kline also wrote that the Department had not responded to his multiple requests for information regarding the process for downsizing his feedlot to less than 1,000 head.

8. FO4 staff visited Mr. Kline's operation on June 4, 2009 to explain the difference between a permitted and an unpermitted feedlot, including the process for converting to a non-permitted operation. FO4 staff observed that manure from some areas of the feedlot were not directed to the manure storage basin and that the basin included an overflow tube, approximately at the 2 foot level that allowed liquid to be released when it reached the level of the tube. Further, grass was not present in the filter strip. By letter to Mr. Kline dated July 8, 2009, FO4 required Mr. Kline to do the following by August 1, 2009: remove the overflow tube in the basin, properly plug the opening and respond in writing regarding whether he intended to renew his NPDES permit. The letter included a listing of requirements that apply regardless of whether an operation has an NPDES permit.

9. On March 9, 2010, FO4 staff conducted a follow-up inspection of the Kline operation because Mr. Kline had not responded regarding the NPDES permit as required in the Department's July 8, 2009 letter. FO4 staff observed manure from the portions of the feedlot not directed to the manure storage basin and from the overflow tube in the basin itself flowing to the filter strip area that was devoid of grass. The manure then exited the filter strip area and flowed into the unnamed Boyer River tributary. At this discharge point the unnamed tributary was foamy, turbid and full of manure solids. Laboratory analyses of samples collected at the discharge point revealed the following concentrations: fecal coliform, 32,000/100 mL; total suspended solids, 7,400 mg/L; ammonia nitrogen as N, 33 mg/L; and total biochemical oxygen demand (5 day), 530 mg/L. By letter to Mr. Kline dated June 11, 2010, FO4, summarized the inspection, notified him that the discharge violated state law and required him to do the following: by July 15, 2010, provide written notification to FO4 whether he wanted to renew the NPDES permit; by August 1, 2010, submit to FO4 an evaluation prepared by a engineer licensed in Iowa concerning manure controls necessary to properly settle and contain all manure solids;

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and by October 1, 2010, implement all manure controls. Mr. Kline was also notified that the Department reserved the right to take further enforcement action.

10. By letter to FO4 dated July 9, 2010, Mr. Kline advised that he has not had more than 1,000 head on feed for several years and that he did not want to continue the NPDES permit. Mr. Kline also requested guidance as to how he should proceed.

11. By email on September 22, 2010, Mr. Kline submitted an engineering evaluation (dated July 21, 2010) of his feedlot prepared by an engineer with the Natural Resources Conservation Service (NRCS). This evaluation recommended the following modifications of Mr. Kline's feedlot: rebuilding some terraces on the hill west of the feedlot; installing a new clean water diversion for the driveway and hill water; regrading the driveway to prevent excess water from entering the sorting/sick pens; installing a sediment basin for the sorting/sick pens; using a travelling gun to allow for proper land application of "water" from the "waste holding pond;" and cleaning out and land applying manure from existing sediment basins.

12. By letter to Mr. Kline dated December 29, 2010, FO4 notified Mr. Kline that his operation meets the definition of "medium CAFO" due to the number of animals in his operation, and because the overflow tube from the manure storage basin and the erosional features observed in the grassed waterway below the basin are considered man-made conduits for the discharge of manure to waters of the United States. The letter included four options for Mr. Kline to come into compliance with Iowa law, including obtaining an NPDES permit as a medium or a large CAFO. Mr. Kline was also advised that the matter would be referred to the Department's Legal Services Bureau due to the water quality violation in March, 2010, and the continued failure to remove the basin overflow tube and properly settle manure solids.

13. By letter to FO4 dated March 8, 2011, Mr. Kline wrote that he would feed no more than 950 head in the future and that the following actions had been taken or were planned:

- "The overflow tube which was installed in the runoff storage pond was removed from the berm in September 2010 and soil was packed in its place.
- The SSB was cleaned September 2010 to allow the original designed capacity.
- Terraces were installed in the pasture to the west of the feedlot to collect and divert more runoff water away from the feedlot area.
- The receiving pens will be removed and the pen area will be leveled and seeded to permanent vegetation by June 15th 2011.
- The constructed filter strip below the receiving pens which was constructed to filter the effluent coming from the open lot areas will be eliminated by June 15th 2011 because all water running off the open feedlot area will be stored in the runoff storage pond and land applied to the crop fields north of the building site."

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IV. CONCLUSIONS OF LAW

1. Iowa Code §455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Since no such permit was in effect for this facility at the time of the discharge, the foregoing facts establish that this provision has been violated.

2. Iowa Code §459A.104 requires the Environmental Protection Commission (Commission) to adopt rules related to the construction or operation of open feedlot operations, including minimum manure control requirements. The Commission has done so at 567 IAC Chapter 65.

3. Iowa Code §459A.401(1) and 567 IAC 65.101(1) require that each open feedlot operation remove all settleable solids from open feedlot effluent prior to discharge into a water of the state. The foregoing facts establish that these provisions were violated.

4. 567 IAC 65.101(9) requires any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts indicate that this provision has been violated.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.

V. ORDER

THEREFORE, the Department hereby orders Mr. Kline to do the following:

1. Within 90 days of the date this Order is signed by the Director submit to FO4 an evaluation prepared by a professional engineer licensed in the State of Iowa. The evaluation must include: status or completion date of all bulleted items in paragraph 13, Statement of Facts, above; professional opinion whether all manure runoff from the Kline operation is directed to the basin and, if not, recommendations for modifications to the operation to achieve that condition.

2. Within 180 days of the date this Order is signed by the Director submit to FO4 a statement prepared by a professional engineer licensed in the State of Iowa that any modifications to the Kline operation as recommended in the engineer's evaluation required in paragraph 1, above, have been completed.

3. At all times, confine less than 1,000 cattle and less animals than any other "large CAFO" category as defined in 567 IAC 65.100. This prohibition does not apply if Mr. Kline applies for and obtains an NPDES permit prior to confining the animals.

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4. Maintain daily inventory records of animals at the operation and submit the records to Department FO4 on a quarterly basis (January-March, April-June, July-September, October-December) by the 10th day of the month following each calendar quarter, using a form provided by the Department.

5. Remove all settleable solids from open feedlot effluent prior to discharge into a water of the state as required in Iowa Code §459A.401(1) and ensure that any discharge to water of the state does not violate water quality standards as provided in 567 IAC 61.3(2).

6. Pay an administrative penalty of \$10,000.00. The penalty shall be paid to the Department within 45 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code §455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided.

2. Pursuant to the provisions of Iowa Code §455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$10,000.00 is assessed. The penalty shall be paid within 45 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. Time and money were saved by Mr. Kline in avoiding required manure control by not properly removing manure solids and maintaining the overflow tube in the basin. It is estimated that these savings are at least \$1,000.00.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by water quality analysis, and by visual observation of impact to the unnamed tributary. Further, this is a repeated violation. Multiple rule and statutory provisions were violated: failure to retain manure solids; discharge to waters of the state/United States; and violation of water quality standards. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the three above-cited violations. However, in view of the maximum administrative penalty and the Culpability factor, below, \$4,500.00 is assessed for this factor.

c. Culpability. Mr. Kline negligently allowed manure solids to leave his operation and intentionally retained the basin overflow tube. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the three above-cited violations. However, in view of the maximum administrative penalty and the Gravity factor, above, \$4,500.00 is assessed for this factor.


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VII. APPEAL RIGHTS

Pursuant to Iowa Code §455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC Chapter 7, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §459A.501



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4th day of
December, 2012.